

A. Approval of T2 agreements with Foreign Controlled Entities

The Air Force has a two-stage process for authorizing agreements with non-domestic partners. This authorization process is to be used prior to negotiation of a CRADA or license agreement with the non-domestic partner or prior to continuing a CRADA or license agreement when an existing, domestic CRADA partner is bought by a foreign entity (i.e., the foreign entity has a controlling interest of the CRADA partner). The first stage gives authorization to negotiate or continue a CRADA or license agreement, if necessary, with the non-domestic partner. The second stage approves the execution or continuation of the agreement. For existing CRADAs where a domestic CRADA partner is bought by a foreign entity, the domestic CRADA partner will be obligated, pursuant to paragraph 11.9 of the model Air Force CRADA, to obtain the Air Force's consent prior to assigning any interest in the CRADA



to a third party. For existing license agreements, pursuant to the license grant provision of the model Air Force Licenses, the licenses are not assignable by the licensee without prior written approval of the Air Force, except to the successor of that part of the licensee's business

to which the licensed invention pertains. The domestic CRADA partner's or licensee's request for such consent/approval will initiate the first stage of this process. There is no requirement that the Air Force must enter into any technology transfer agreement with non-domestic partners. Air Force activities shall observe all requirements of Stage I and Stage II, with respect to CRADAs or Patent Licenses or Assignments with non-domestic partners.

STAGE I -- Determination of Foreign Interest and Authorization to Negotiate

Information, over and above that normally collected for domestic CRADAs, must be gathered when dealing with foreign owned or controlled entities.

The review process begins with a determination of foreign interest. This is accomplished by providing the potential partner with the following checklist of questions:

Questions for Potential Partner:

- a. Yes ☐ No ☐ Do foreign interests own or have beneficial ownership in 25 percent or more of your organization's securities?
- b. Yes ☐ No ☐ Does your organization own any foreign interest in whole or in part?
- c. Yes ☐ No ☐ Do any foreign interests have positions, such as directors, officers, or executive personnel in your organization?
- d. Yes ☐ No ☐ Does any foreign interest control or influence, or is any foreign interest in a position to control or influence the election, appointment, or tenure of any of your directors, officers, or executive personnel?
- e. Yes ☐ No ☐ Does your organization have any contracts, agreements, understandings, or arrangements with a foreign interest(s)?
- f. Yes ☐ No ☐ Is your organization indebted to foreign interests?
- g. Yes ☐ No ☐ Does your organization derive any income from non-

- domestic countries or income in excess of 10 percent of gross income from non-designated foreign interests?
- h. Yes ☐ No ☐ Is 25 percent or more of any class of your organization's securities held in "nominee shares," in "street names," or in some other method which does not disclose the beneficial owner of equitable title?
- i. Yes ☐ No ☐ Does your organization have interlocking directors with foreign interests?
- j. Yes ☐ No ☐ Are there any citizens of foreign countries employed by or who may visit your facility (or facilities) in a capacity which may permit them to have access to classified information?
- k. Yes ☐ No ☐ Does your organization have any foreign involvement not otherwise covered in your answers to the above questions?
- l. Yes ☐ No ☐ If any answer to questions "a" through "k" above is "Yes", does such foreign government permit United States agencies, organizations, or other persons to enter into CRADAs and licensing agreements?
- m. Yes ☐ No ☐ If the answer in question "l" is "Yes", provide the name and principal address of the controlling foreign company's country.
- n. Yes ☐ No ☐ Is your status that of small business?
- o. Yes ☐ No ☐ Do you agree that products embodying inventions made under this CRADA or produced through use of such inventions made under this CRADA will be substantially manufactured in the United States?
- If the answer to any of these questions is yes, then the local technology transfer focal point should request more details concerning the specific question. For example, if the answer to question a) is yes, then request how much of the interest in the organization is foreign owned and by what foreign organizations. If 50 percent of the organization is owned by foreign interests or if there is substantial foreign influence (e.g. under 50 percent ownership and substantial foreign debt), then the local technology transfer focal point shall request approval from SAF/IAPQ to enter into negotiations with the foreign owned organization by supplying at least the following information:
1. The identity of the foreign company by name
 2. The identity of the country of origin of the foreign interests
 3. Name of technology involved
 4. A detailed explanation of why collaborator is the best choice over potential domestic collaborators
 5. An explanation of purpose and benefits
 6. Level of classification of the information involved
 7. Whether the technology is export controlled?
- Give details if yes.
- Sources to verify company/individual authorization to access export control information can be found at attachment N1.
- The local technology transfer focal point shall forward this request to AFSAC/IPC. Upon receipt of the summary sheet and letter requesting authorization to negotiate a non-domestic CRADA, AFSAC/IPC initiates tracking in their database. A review of the summary sheet is done by AFSAC/IPC. The summary sheet is forwarded to SAF/IAPQ for review by senior staff and approval to negotiate. Upon receipt of approval from SAF/IAPQ, AFSAC/IPC updates their database and provides notice to the technology transfer focal point to continue discussions. Attachment N2 is a flow chart showing the process.
- Note: A disapproval resulting from responses

to the questions listed in Part A of this section will terminate potential agreement activity and additional justification will be required if the technology transfer focal point wishes to pursue a CRADA with this outside partner.

STAGE II -- Negotiation, Signature and Review of Changes

If negotiations with the partner are approved, then the local technology transfer focal point follows the normal negotiation procedures for CRADAs and patent licenses. Upon completion of negotiation and signature, a signed copy of the agreement is sent to AFSAC/IPC for their records. AFSAC/IPC notifies SAF/IAPQ of the signature date.

The technology transfer focal point is required to provide AFSAC/IPC a minimum of an annual update regarding the status (open/closed) of the agreement through its completion. AFSAC/IPC then notifies SAF/IAPQ of the status. Attachment N2 is the flow chart depicting the process.

If a CRADA partner or a licensee informs than the local technology transfer focal point of a major change to the work plan or of a change of ownership, then the local technology transfer focal point must repeat the steps in Stage I.

B. Security Controls

Local technology transfer focal points and S&Es working on CRADAs of any kind must be fully cognizant of security issues when working with collaborating parties. If the CRADA involves working with sensitive information of any kind, Air Force personnel must follow all security regulations. To this end the Defense Security System (DSS) will provide information on companies that have been cleared for security purposes or are in the process of getting a security clearance. DSS provides Air Force organizations foreign ownership control and influence (FOCI) information gathered at the time of clearance.

When contacted concerning an Air Force technology-owning entity and upon request, the Defense Security Service (DSS) will search its database of cleared contractors. If the contractor is in the

database, DSS will advise whether the cleared contractor has any limitations to its Facility Security Clearance due to FOCI and what those limitations are. DSS will provide a written copy of those limitations, including the level of the Facility Security Clearance and safeguarding capability, if any. DSS will verify industrial contractors only.

Companies not listed in the DSS database should be directed to the regional office for instructions on obtaining a Facility Security Clearance. Contact your local DSS office (Attachment N3).

Foreign interests are not linked to a person's nationality. Foreign interests refer to non-US interests.

The Air Force organization will carry out their local international office review using any of the following: Commodity Control List, the Military Critical Technology List review, or the US Trade representative. Notify the local servicing security activity when the CRADA will have a foreign involvement or presence if negotiation approval has been requested from SAF/IAPQ.

In order for DSS to do background investigations on industrial organizations, Air Force organizations are responsible for coordinating with their command Office of Intelligence. When contacted by an Air Force technology-owning organization, and upon request, DSS researches the business affiliations of candidate CRADA-partner firm(s) for foreign ownership (greater than 25 percent owned by a foreign entity) and for ties with unfriendly "front" companies. The request for DSS research should be made as early as possible in the CRADA negotiation process. DSS requires the information on the cover page and the signature page of the CRADA document. Negative information from DSS on this investigation can "veto" any potential or actual CRADAs considered by the Air Force entity above. Upon determining that a foreign entity is a viable cooperative partner, the laboratory is required to follow all appropriate foreign disclosure and export control guidelines as well as ensure all information transfer mechanisms are in place.

Web Sites of Interest to Assist in Determining the Eligibility of a Company or Person to Access Export-Controlled Technology and Technical Data

Items on the Commerce Control List:

15 CFR 746 Embargoes and Other Special Controls:

http://w3.access.gpo.gov/bxa/ear/ear_data.html

15 CFR 764 Supp 2 Denied Persons List: <http://www.bxa.doc.gov/dpl/default.shtm>

The list indicates persons that have been denied export privileges or have had their denials lifted. Includes dates.

15 CFR 744, Supp 4 Entities of Proliferation Concern:

<http://www.bxa.doc.gov/entities/default.htm>

This list indicates foreign end users that have been determined to present an unacceptable risk of diversion to developing weapons of mass destruction or missiles used to deliver those weapons. This list puts exporters on notice that any products sold to these end users may present concerns and will require a license.

Know Your Customer Guidance: <http://www.bxa.doc.gov/Enforcement/knowcust.htm>

Items on the U.S. Munitions List:

22 CFR 126.1 Prohibited Exports and Sales to Certain

Countries/Defense, Trade Controls - Embargo Reference Chart:

<http://www.pmdtc.org/country.htm>

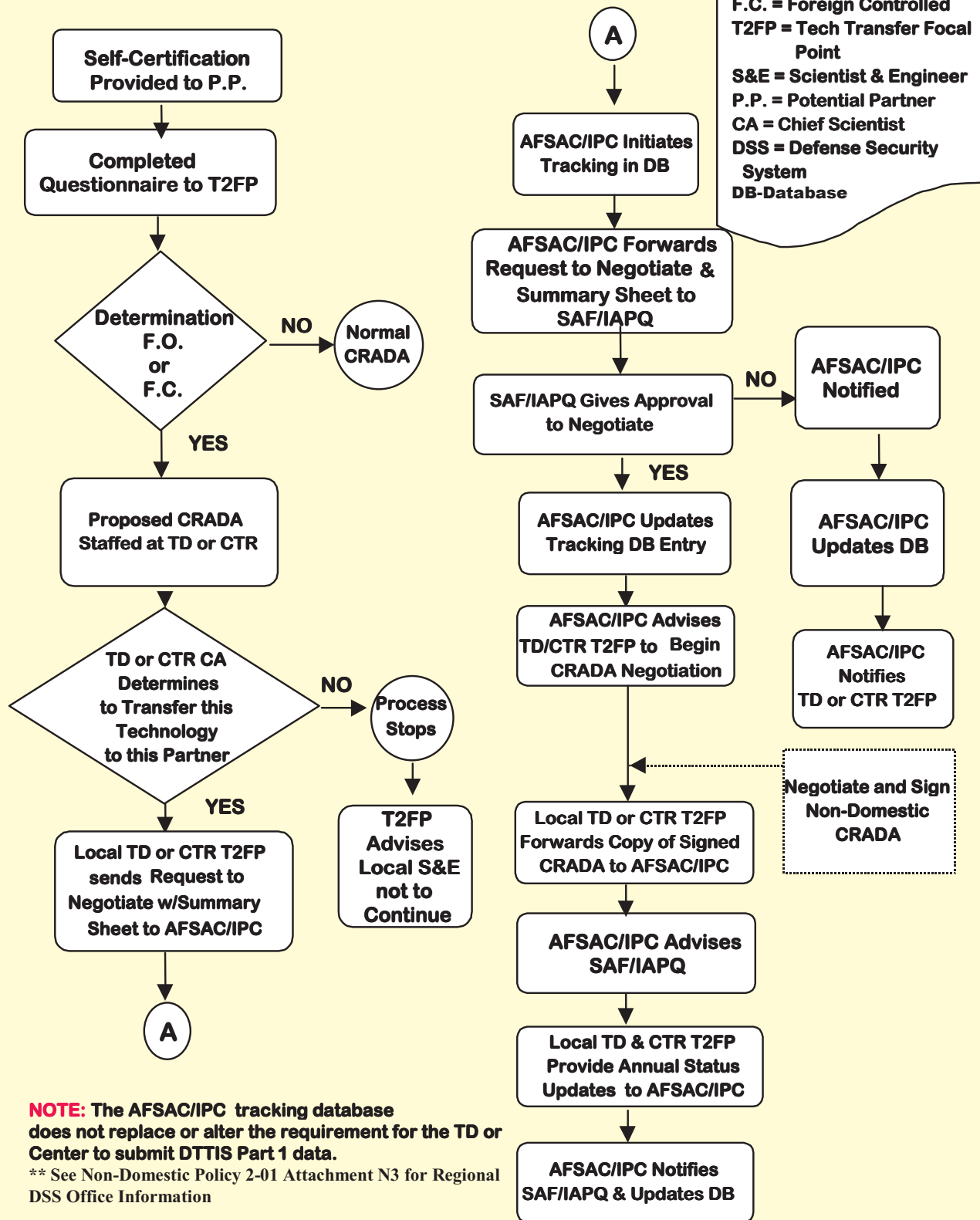
Defense Trade Controls - List of Debarred Parties: <http://www.pmdtc.org/debar059.htm>

U.S./Canada Joint Certification Program: <http://www.dlis.dla.mil/ccal/index.htm>

This joint program establishes the eligibility of a U.S. or Canadian contractor to receive unclassified technical data that is export-controlled and under the control of DoD or the Canadian Department of National Defence. The cited URL is a web site that contains the Certified Contractor Access List (CCAL), containing companies and individuals that have been certified. An entry for a company or individual indicates if the certification is active and how long the certification is for or if a party is debarred.

For those US Defense Department laboratories wishing to work with Canadian Defence Department activities, check out <http://www.dtic.mil/natibo>. Mr. Aldridge has signed a Memorandum of Understanding with his Canadian counterpart that will allow studies, R&D, and prototypes to be undertaken jointly.

Process to Receive Approval to Negotiate for Non-Domestic CRADAs



Defense Security System (DSS) Regional Office Information

<http://www.dss.mil/aboutdss/loc.htm>

Southeast Region

Director: Patricia F. Dodson
2300 Lake Park Drive, Suite 250
Smyrna, GA 30080-7606
Phone: 770-801-3305
Fax: 770-801-3324

Alabama (South-Mobile to Montgomery), Florida (North), Georgia, Louisiana
(All except the extreme northern portion, Shreveport to Tallulah), Mississippi
(Southern half-Vicksburg to Meridian and all areas south)
Huntsville, AL
Phone: 256-895-5280

Alabama (North-from Birmingham to Tennessee), Arkansas, Kentucky,
Louisiana (North), Mississippi (North), Tennessee (West-from the time zone to
Memphis)
Patrick AFB, FL
Phone: 321-494-0498

Florida (All south of St Augustine), Puerto Rico, US Virgin Islands
North Carolina, South Carolina, Virginia (Central and South)
Virginia Beach, VA
Phone: 757-490-8561

West Region

Director: David P. Hopkins
One World Trade Center, Suite 622
Long Beach, CA 90831-0622
Phone: 562-435-3802
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Northeast Region

Director: Johnnie R. St.Clair
938 Elkridge Landing Road, Suite 300
Linthicum, MD 21090
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Central Region

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Midwest Region

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